Crl.A. 289/2001
BEFORE
HON'BLE MR JUSTICE D BISWAS
HON'BLE MR JUSTICE HRISHIKESH ROY

Biswas, J.

This appeal from Jail is directed against the judgment dated 27-6-01 passed by the Addl. Sessions Judge, Dibrugarh in Sessions Trial No.157 of 2000.

2. By the impugned judgment, the learned Sessions Judge convicted the appellant Gopal Bhumij under section 302 IPC for causing death of Gulsan Bhakta intentionally by stabbing him in the abdomen and sentenced him to undergo imprisonment for life.

3. The genesis of the prosecution case emanates from an FIR wherein it has been stated that on 17-8-2000, around 10 pm, Gulsan Bhakta, husband of the informant Atowari Bhakta went to the house of the appellant Gopal Bhumij, a co-villager to ask him about something. Gopal Bhumij stabbed Gulshan Bhakta with a knife in his courtyard where her husband succumbed to the injuries.

4. On receipt of the ejahar, Bordubi PS case No.69 of 2000 was registered. The Police investigated the case, visited the place of occurrence, prepared the Inquest Report, examined the witnesses and on completion of investigation submitted chargesheet against the accused-appellant under section 302 IPC.

5. On commitment, the learned Sessions Judge framed charge against the accused under section 302 IPC. The charge was read over and explained to which the accused pleaded not guilty. Thereafter, the learned Sessions judge proceeded with the trial, examined as many as 7 prosecution witnesses, examined the accused person and eventually on conclusion of trial, delivered the judgment of conviction and sentence.

6. We have heard Ms Rita Boro Bora, learned Amicus Curiae for the appellant and Mr. K. C. Mahanta, learned Public Prosecutor for the State of Assam.

7. Learned Amicus Curiae argued that there are certain vital contradictions in the evidence of PW 6 Tuni Bhakta, the only eye witness of the case. Therefore, it would not be safe to base the conviction on the contradictory evidence of PW 6 which is not corroborated by any other evidence.

8. There is no dispute that out of the 7 witnesses examined, PW 6 Tuni Bhakta is only the eye witness of the case. He is the son of PW 4 Kanta Bhakta. Before evidence of this witness is considered, it would be apposite to refer to the evidence of PW 5 Dr. R. Chaliha who had performed the post mortem examination on the dead body of Gulshan Bhakta. PW 5 Dr. Chaliha stated that he had found the following injuries on the person of the deceased:-

1. An incised wound over the left anterior chest wall measuring 9 X 3 cm situated 5 cm from the middle and involving the left nipple.

2. A stab wound over the left iliac fossa measuring 4 X 1 cm situated 8 cm below and lateral to the umbilicus.

3. An abrasion over the right molar region measuring 4 X 1 cm

Injuries: Injuries to the walls are already described. There is presence of blood in the left plural cavity. Left lung is punctured. Other organs are healthy.
In the abdomen: Peritoneum is punctured. Other organs are healthy.

In the opinion of Doctor PW 5, the death was due to shock and hemorrhage as a result of the injuries sustained. The Doctor has further opined that the injuries were ante mortem and caused by sharp cutting and pointed weapon. In his cross-examination, PW 5 stated that punctured wound in the left lung is sufficient cause to death in the ordinary course of nature.

9. The evidence of PW 5 read with the Inquest Report, Ext.2 clearly establish that Gulshan Bhakta succumbed to the injuries sustained by him as alleged by the prosecution.

10. We would now proceed to examine the evidence on record in order to determine the involvement of the appellant in the incident. PW 1 is the witness to the seizure of the weapon. PW 3 is the witness to the Inquest Report. Their eviden

ce is not in controversy, being formal in nature. We, therefore, refer to the ev idence of PW 2 Smt. Atowari Bhakta, the wife of the deceased. She has stated tha t her husband came back home from Duliajan at 9 pm. On that day, her Bhini (elde r sister's husband) Kanta Bhakta was beaten by the accused. After arrival from D uliajan, her husband heard about the occurrence and went to the house of the acc used to ask about it. Kanta Bhakta (PW 4) and his son Tuni Bhakta(PW 6) also ac companied her husband. After sometime PW 6 came back and informed PW 2 that the accused Gopal had killed Gulshan Bhakta. Immediately thereafter, Gopal shouted t hat he had killed Gulshan and he would also kill his wife. The witness further deposed that on the next day, the Police came and she also went to the place of occurrence where she found her husband's dead body lying in the courtyard of acc used Gopal. From PW 2, we find that the deceased came back home in the night and after hearing about the occurrence of assault on Kanta Bhakta, he went to the h ouse of Gopal along with PW 6. Immediately thereafter, PW 6 Tuni Bhakta came and reported about the occurrence. It also appears that she went to the house of Go pal on the next day and saw her husband's dead body lying in the courtyard of th e accused.

11. The witness has been subjected to cross-examination but nothing adverse to the prosecution could be elicited out of her. Rather, she had reiterated what she has stated in her examination-in-chief.

12. The evidence with regard to the earlier occurrence during the day time h as been supported by the PW 4 Kanta Bhakta. In his evidence, PW 4 has stated tha t accused Gopal came to his house and assaulted him. When Gulsan (deceased) came back home, he reported him about the occurrence whereupon he went to the house of Gopal along with PW 6 Tuni. Tuni came back and reported that Gopal had killed Gulshan with a knife. This witness also saw Gulsan lying dead with injuries on his abdomen. In his brief examination, he admitted that he had not seen the occu rrence. The evidence of PW 4 remains undisturbed and it supports the story of e arlier act of assault by the accused on Kanta Bhakta, brother-in-law of the dece ased.

13. PW 6 Tuni Bhakta is the eye witness. He has stated that Gopal had assaul ted his father Kanta Bhakta in day time. Around 6 pm on that day, Gulshan and PW 6 went to Gopal's house where the accused had stabbed Gulshan with a knife in h is abdomen. The evidence of this witness who has seen the occurrence could not b e assailed by the defence. In his brief cross-examination, he was asked about th e time and the length of the knife. This witness specifically denied the suggest ion that he had not seen Gopal assaulting Gulshan. The evidence of PWs 2, 4 and 6 read together, in our considered opinion, proved beyond all shadow of doubts t hat the appellant Gopal Bhumij had stabbed Gulshan when the latter went to his h ouse along with PW 6 to ask for the reason as to why the accused had assaulted K anta Bhakta (PW 4).

14. Learned Amicus Curiae has submitted that the prosecution has not been ab le to prove that the appellant had assaulted Gulshan with the intention to elimi nate him for ever. The assault took place as an aftermath of a quarrel between the accused and the PW 4 Kanta Bhakta and when approached by the deceased, the a ccused had dealt with only two knife blows.

15. We have examined the submission of the learned Amicus Curiae with refere nce to the evidence on record. It is true that there was an incident of assault in the morning in which PW 4 was assaulted. In the evening, the deceased went to the house of the accused along with PW 6. In the given circumstances, we think that it would meet the ends of justice if the accused-appellant is convicted und er section 304 Part-I IPC.

16. Accordingly, we modify the conviction recorded by the Sessions Judge an d convict the accused under section 304 Part-I IPC. On such conviction, we sente nce him to undergo imprisonment for a period of five years and with a fine of Rs .500/-, in default, to suffer further RI for one month. The period already spent in custody shall be set off from the substantive sentence imposed.

17. The appeal stands disposed of. Learned Amicus Curiae be paid Rs.3,000/- for the service rendered before this court.